IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10383 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI PRAVINBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 24.4.2003 passed by the District Magistrate, Bhavnagar, against him, in exercise of powers under Section 3(1) of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 24.4.2003.

2. The grounds served upon the petitioner and placed on record reveal that the detaining authority placed reliance on nine offences registered against the petitioner under Sections 379 of the Indian Penal Code, wherein according to the detaining authority, the petitioner was indulged in committing theft of two wheeler vehicles. In addition to this, the detaining authority also took into consideration in-camera statements, four in number, recorded by the sponsoring authority on 07.4.2003 and verified by the detaining authority on 21.4.2003. From the above material, the detaining authority has passed the order impugned in this Special Civil Application.

3. Learned Advocate Mrs. Subhadra G. Patel for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority, which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground that whether the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind on the vital aspects of the matter. It is alleged that by activities of the petitioner, the maintenance of public order is adversely affected. To come to this subjective satisfaction, as aforesaid, the detaining authority, has taken into consideration two aspects, firstly registration of crimes and secondly in-camera statements of four witnesses. On perusing the record, it clearly appears that the registration of crimes against the petitioner under Section 379 of the Indian Penal Code would not affect the public order, and on that ground, the order of the detaining authority must be held to be vitiated on account of non-application of mind. On going through the the statements of four witnesses, relied upon by the detaining authority, it is required to be examined whether the activities of the petitioner, as revealed from the material, was prejudicial to the maintenance of public order. Having gone through the statements of each

of the witnesses, it clearly appears that the allegation, on the face value, as they are made in the statements of the witnesses, one would not reach to the reasonable inference that those incidents were involving public order. On going through the statements carefully, it appears that the incidents referred by each of the witnesses were incidents against an individual, having no adverse effect prejudicial to the maintenance of public order, even disturbing the public tempo and/or peace and tranquility of the locality. Such a casual and isolated individual incidents, can hardly have any implication, which may effect prejudicial to the maintenance of public order and at the most this incident referred to the maintenance of law and order, which can be taken care of by the ordinary law. The order impugned in this Spl. Civil Application therefore is vitiated on this ground that there is non-application of mind by the detaining authority so far this aspect of the matter is concerned. The impugned order is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Bhavnagar on 24.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair